

**Statement of Senator Tom Udall**  
Senate Committee on Rules and Administration  
Hearing on S. 2219, the DISCLOSE Act of 2012  
March 29, 2012

Mr. Chairman,

Thank you for holding today's hearing on this important bill.

In January 2010, the Supreme Court issued its disastrous opinion in *Citizens United v. FEC*. Two months later, the DC Circuit Court of Appeals decided the *SpeechNow v. FEC* case. These two cases gave rise to Super PACs, organizations that have poured millions of dollars into negative and misleading campaign ads, often without disclosing the true source of the donations.

While the *Citizens United* and *SpeechNow* decisions sparked a renewed focus on the need for campaign finance reform, the Court laid the groundwork for a broken system many years ago. In 1976, when the Court held in *Buckley v. Valeo* that restricting independent campaign expenditures violates the First Amendment right to free speech, it established the flawed precedent that money and speech are the same thing. Since then, our nation's policymakers are all too often elected based on their ability to raise money or the size of their personal fortunes, rather than the quality of their ideas or dedication to public service.

I don't think we can truly fix this broken system until we undo the flawed premise that spending money on elections is the same thing as exercising the constitutional right of free speech. That can only be achieved if the Court overturns *Buckley* or we amend the Constitution. Until then, we will fall short of the real reform that is needed.

But we still should do all that we can in the meantime to make a bad situation better. That's what we're trying to do with the DISCLOSE Act. It's not the comprehensive reform that I would like to see, but it's what's possible under the flawed Supreme Court precedents that constrain us.

The DISCLOSE Act of 2012 asks the basic, and eminently fair, question—Where does the money come from and where is it going?

Under the bill, any covered organization – including corporations, labor unions, non-profit organizations, and Super PACs – that spends \$10,000 or more on campaign-related disbursements during an election cycle would have to file a disclosure report with the Federal Election Commission within 24 hours. It would also have to file a new report for each additional \$10,000 or more that is spent, detailing the amount and nature of each expenditure over \$1000 and the names of all its donors who gave \$10,000 or more. The report also would include a certification by the head of the organization that the disbursement was not coordinated with a candidate campaign.

This is a practical, sensible measure. It doesn't get money out of our elections. But, it does shine a light into the dark corners of the campaign finance system. A similar bill in the last Congress

had broad support, with 59 votes in the Senate and passing the House. Now that we are seeing the real impact of the *Citizens United* and *SpeechNow* decisions on our elections, the need for this legislation has become even more apparent.

The downpour of unaccountable spending is wrong. It undermines our political process. And it has sounded an alarm that is truly bipartisan.

Just this week, my friend John McCain said the following at a panel hosted by Reuters:

“What the Supreme Court did is a combination of arrogance, naïveté and stupidity the likes of which I have never seen. I promise you, there will be huge scandals because there’s too much money washing around, too much of it we don’t know who’s behind it and too much corruption associated with that kind of money,”

In 2010, in the aftermath of *Citizens United*, Senator Collins’s spokesman provided this statement to *The Hill*:

“As a co-sponsor of the 2002 campaign reform law, Senator Collins was disappointed that the Supreme Court struck down so many key provisions of this bipartisan legislation. She believes that it is important that any future campaign finance laws include strong transparency provisions so the American public knows who is contributing to a candidate’s campaign, as well as who is funding communications in support of or in opposition to a political candidate or issue.”

The DISCLOSE Act of 2012 does exactly what Senator Collins called for – it lets the American people know who is funding political advertising.

But even this simple requirement for transparency in our elections has critics. Today we’ll hear from David Keating, the president of the Center for Competitive Politics and one of the plaintiffs in the *SpeechNow* case.

Mr. Keating recently coauthored an op-ed in *The Wall Street Journal* titled “Meet the Parents of the Super PACs.” The authors take credit for the creation of Super PACs and argue that they provide an important function of informing voters about candidates.

The authors state that, “Money is a proxy for information in campaigns.” I might agree, if the information provided to voters was balanced and accurate. But the campaigns and their affiliated Super PACs don’t go out and spend millions of dollars educating the public about their candidates’ qualifications to hold elected office. Instead, they dump millions into inaccurate and misleading attack ads about their opponents. This is bad for our democracy, is a disservice to the voting public, and to defend it by hiding behind the First Amendment is an affront to our Founders.

I recall the debate when we considered the DISCLOSE Act in the last Congress. Many of our concerns then were still hypothetical. We could only guess how bad it might get. Well, now we know. Unfortunately, our worst fears have come true. The toxic effect of the *Citizens United* and

*SpeechNow* decisions has become brutally clear. The floodgates to unprecedented campaign spending are open and threaten to drown out the voices of ordinary citizens.

Look at what we have seen already, and we're only in the primary season. Huge sums of unregulated, unaccountable money are flooding the airwaves. An endless wave of attack ads, paid for by billionaires, is poisoning our political discourse. 501c4 "social welfare organizations" are abusing their non-profit status to shield their donors and then funnel the money into Super PACs.

The American public, rightly so, looks on in disgust. A recent Washington Post–ABC News poll found that nearly 70% of registered voters would like Super PACs to be illegal. Among independent voters, that figure rose to 78%. Supporters of Super PACs and unlimited campaign spending claim they are promoting the democratic process. But the public knows better– wealthy individuals and special interests are buying our elections.

Our nation cannot afford a system that says 'come on in' to the rich and powerful. And says 'don't bother' to everyone else. The faith of the American people in their electoral system is shaken by big money. It is time to restore that faith. It is time for Congress to take back control.

There is a great deal to be done to fix our campaign finance system. I will continue to push for a constitutional amendment that will allow comprehensive reform. But, in the interim, let's at least shine a light on the money. The American people deserve to know where this money is coming from. And they deserve to know before, not after, they head to the polls. That's what the DISCLOSE Act will achieve.

Thank you again, Mr. Chairman, for holding this hearing. I look forward to hearing from our witnesses. I ask that my entire statement be included in the record.